

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN FRANCIS GRAY
and RYO MINOGUCHI

Appeal 2007-0626
Application 10/009,087
Technology Center 1600

Decided: April 23, 2007

Before BRADLEY R. GARRIS, CHARLES F. WARREN, and
THOMAS A. WALTZ, *Administrative Patent Judges*.

WALTZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Primary Examiner's final rejection of claims 1 through 10, which are the only claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 6.

According to Appellants, the invention is directed to an absorbent article having a body surface and a garment surface, with a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed between the topsheet and backsheet (Br. 2). At least a portion of the absorbent article is treated with a skin care composition, with a skin care zone having a greater basis weight of the skin care composition than the preferential acquisition zone (*Id.*). Independent claim 1 is illustrative of the invention and is reproduced below:

1. An absorbent article having a body surface and a garment surface, the absorbent article comprising a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed therebetween, at least a portion of the absorbent article being provided with a skin care composition, characterized in that

the absorbent article has a preferential acquisition zone and a skin care zone, the preferential acquisition zone covering at least a portion of the vulva of the wearer when the absorbent article is applied on the wearer's body,

the skin care zone is provided with the skin care composition of greater basis weight than the preferential acquisition zone.

The Examiner has relied upon the following prior art reference as evidence of obviousness:

Roe (WO '684)

WO 99/22684

May 14, 1999

ISSUES ON APPEAL

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over WO '684 (Answer 3).

Appellants contend that WO '684 teaches applying two different skin care formulations on two regions of the same web material while the present

invention applies one skin care formulation at different basis weights on two different zones of an absorbent article (Br. 3-4).

The Examiner contends that WO '684 discloses a preferential acquisition zone and a skin care zone (Answer 5), while suggesting that the panels or "zones" may be free of the skin care composition or be present in varying amounts "ascertainable by routine experimentation" to provide the desired skin care benefits (Answer 6).

Accordingly, the issue presented by the record in this appeal is as follows: does WO '684 disclose, teach or suggest that one skin care composition can be applied to different zones of an absorbent article in varying basis weights that are ascertainable by routine experimentation to provide the desired skin care benefits?

We determine that the Examiner has established a prima facie case of obviousness in view of the reference evidence, which prima facie case has not been adequately rebutted by Appellants' arguments. Therefore, we AFFIRM the sole ground of rejection in this appeal essentially for the reasons stated in the Answer, as well as those reasons set forth below.

OPINION

We determine the following factual findings from the record in this appeal:

- (1) WO '684 discloses an absorbent article with an absorbent core, topsheet, and backsheet, with the backsheet and the topsheet positioned adjacent the garment surface and body surface, respectively, of the absorbent core (WO '684 8:6-7; 10:7-10; Answer 3);

- (2) WO '684 teaches that it would be desirable to deliver to the skin of the wearer skin care compositions specifically formatted to provide desired skin health benefits in particular zones or regions of the skin of the wearer, and to localize the placement of specific skin care compositions onto specific regions in order to provide these benefits (WO '684 4:1-11);
- (3) WO '684 teaches the use of only one skin care composition applied in an "effective amount" to different portions or regions of the absorbent article, which regions may include zones corresponding to Appellants' "preferential acquisition zone" and a "skin care zone" (WO '684 26:37-27:9; 34:1-2; 34:36-35:1; 37:29-30; 53:31-32; Figure 12 and 32:29 *et seq.*; Answer 5-6);
- (4) WO '684 teaches that any of the panels may be "composition free" in that a skin care composition is not disposed thereon (WO '684 34:27-28; Answer 6);
- (5) WO '684 teaches that the ability to immobilize skin care compositions on a feature of the diaper allows the manufacturer the ability to target and deliver different functional benefits to different regions of the wearer and the product (WO '684 34:28-31);
- (6) WO '684 defines the "effective amount" of a skin care composition, discloses various ranges of amounts used, while teaching that these ranges are by way of illustration only and that the "skilled artisan" could determine the amount of skin care composition depending on the nature of the ingredients and

desired benefits using only “routine experimentation”

(WO ‘684 38:15-33; Answer 6); and

- (7) WO ‘684 teaches that the type and amount of skin care composition must not degrade the function of the topsheet, i.e., the ability of the topsheet to be highly liquid pervious to allow urine or menses to rapidly penetrate through the topsheet into the absorbent core must not be affected; this may be accomplished by nonuniform application of the skin care composition to the topsheet (WO ‘684 54:10-32).

In appropriate circumstances, a single prior art reference can render a claim obvious. *See B.F. Goodrich Co. v. Aircraft Braking Sys. Corp.*, 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996). Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the disclosure or teachings of the reference. *See In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). Discovery of the optimum values of result-effective variables in a known process is ordinarily within the ordinary skill in the art, absent a showing of unexpected criticality. *See In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990); *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980); and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Applying the preceding legal principles to the factual findings on the record in this appeal, we determine that the Examiner has established a prima facie case of obviousness in view of the reference evidence, which prima facie case has not been rebutted by Appellants’ arguments. We note

that Appellants have not submitted any evidence to establish any criticality or unexpected results.

As shown by factual findings (1) and (3) listed above, we determine that WO '684 discloses an absorbent article having the same structure and "zones" or panels as recited in claim 1 on appeal, including at least a portion of the article being provided with a skin care composition.¹ As shown by factual findings (2), (3), (5), and (6) as listed above, we determine that WO '684 clearly teaches and suggests that the amount of skin care composition on each panel or "zone" of the absorbent article would have been well within the "routine experimentation" capable of one of ordinary skill in this art to provide the desired functional benefits. Additionally, as shown by factual finding (4) listed above, we determine that WO '684 teaches one of ordinary skill in this art that any panel can be free of the skin care composition. We determine that applying this teaching to the known "preferential acquisition zone" by one of ordinary skill in the art would have resulted in a skin care zone (any other treated panel) with a greater basis weight than the preferential acquisition zone. Furthermore, we determine that one of ordinary skill in this art would have been led to use a smaller basis weight of skin care composition on the "preferential acquisition zone" than other zones from the teachings of WO '684 since the reference teaches that the function of the topsheet (liquid permeability) cannot be compromised by the use of a skin care composition (*see* factual finding (7) listed above). We determine that WO '684 teaches the nonuniform application of a skin care composition

¹ We limit our consideration in this appeal to claim 1 since Appellants state that the claims stand or fall together (Br. 2).

to the topsheet of an absorbent article so that the composition does not block the flow of liquid through the topsheet, thus suggesting that the “preferential acquisition zone” which acquires the most liquid should be provided with the least amount of skin care composition (*Id.*).

For the foregoing reasons and those stated in the Answer, we affirm the rejection of claims 1-10 under § 103(a) over WO ‘684.

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

sld/ljs

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